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December 22, 2006

**By CM/ECF**

The Honorable Sue L. Robinson  
United States District Court for the District of Delaware  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, DE 19801

**Re: Cordis Corp. v. Boston Scientific Corp., C.A. 98-197-SLR**

Dear Chief Judge Robinson:

Boston Scientific respectfully submits this letter to respond only to Cordis' references in its recently-filed reply brief on inequitable conduct to evidence outside the record. D.I. 327.

For the third time in this litigation, Cordis improperly relies on the Arrett opinion (*id.* at 9-10, ¶¶ 30-31) and the 1993 and 1998 Isostent agreements (*id.* at 11, ¶¶ 36-37), even though these materials are not in the record, and even though this Court previously denied Cordis' motion to supplement the record with these materials in 2002 after the inequitable conduct bench trial. D.I. 256, ¶ 3.<sup>1</sup>

Cordis' tries to disparage BSC's credibility by accusing BSC of failing to "disclos[e] all relevant facts to the Court" (D.I. 327, ¶ 30, ¶ 36), but it is Cordis who misleads the Court by failing to acknowledge that BSC submitted evidence that contradicts Cordis' interpretation of these materials when it successfully opposed Cordis' motion to supplement after trial. D.I. 241.

In particular, BSC showed in its opposition brief that Mr. Arrett did not interpret the Lau patent to disclose undulating longitudinal structures. *Id.* at 4-7. Moreover, BSC showed that the invention of the '312 patent was included within the scope of Dr. Fischell's testimony in the Trellis litigation, that no work on inventions to be assigned to Isostent was performed before December 17, 1993, and therefore that this testimony was false and inconsistent with his testimony in this Court that he and his sons conceived the '312 invention over the Thanksgiving holiday weekend in November 1993. *Id.* at 7-14.

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<sup>1</sup> Despite this Court's denial of Cordis' motion to supplement, Cordis also improperly attempted to rely on these materials in its original reply appeal brief in the Federal Circuit. Cordis only filed a corrected reply appeal brief after BSC notified Cordis that it intended to move to strike.

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Cordis' references in its final reply brief to these materials that are outside the record should not be permitted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karen E. Keller".

Karen E. Keller (# 4489)

KEK:cg

cc. Clerk of the Court (by CM/ECF and Hand Delivery)  
Steven J. Balick, Esquire (by CM/ECF and Hand Delivery)  
Eugene M. Gelernter, Esquire (by e-mail)  
George E. Badenoch, Esquire (by e-mail)